IN THE

Supreme Court of the United States.

THE PITTSBURGH & LAKE ANGELINE IRON COMPANY,
Plaintiff in Error,

vs.

THE CLEVELAND IRON MINING COMPANY, AND THE LAKE SUPERIOR IRON COMPANY,
Defendants in Error.

BRIEF FOR DEFENDANT, CLEVELAND IRON MINING COMPANY, TO DISMISS WRIT OF ERROR.

A writ of error to the judgment of the Supreme Court of Michigan has been allowed herein and a motion made to dismiss this action for want of jurisdiction, coupled with a motion to affirm the judgment if this court has jurisdiction hereof. This brief is filed in support of the motion to dismiss.

The plaintiff in error herein, complainant in the state court, claiming to own some land which was formerly in the bed of Lake Angeline and north of the south line of section ten, filed its bill in equity in Marquette county, Michigan, to have the boundaries of its land determined and its land set off

to it in severalty and for an accounting against the defendants for the iron ore which they had taken from the land belonging to complainant, averring that the defendants were mining and threatened to continue to mine from complainant's property.

The three parties, by mesne conveyances from the original patentees of the United States, owned the whole of the land which was formerly the bed of Lake Angeline. The two defendants claimed that the south line of section ten separated their respective properties from the complainant's property. Lake Angeline was within the municipal limits of the city of Ishpeming, Marquette county, Michigan.

The original patents under which the Cleveland Iron Mining Company claimed ownership in the bed of the lake, in terms granted the east half of section 10, and the Cleveland Company had always claimed to own the land north of the south line of section 10 by virtue of the language of these patents. In 1887 the Supreme Court of Michigan in Clute vs. Fisher, 65 Mich., p. 48, had decided that the owners of fractional parts of a section bordering upon an inland lake, owned all of the bed of the lake included within the section lines as projected into the lake. Before this decision the Lake Angeline Company had made some ground by dumping refuse into the lake and had built some buildings north of the south line of section 10, opposite the property claimed by the Lake Superior Iron Company, and learning of Clute vs. Fisher, took the advice of Mr. Clark, who appears as attorney for it in this suit, as to the effect of Clute vs. Fisher. Acting upon Mr. Clark's advice, Lake Angeline Company removed its buildings

south of the section line. The Lake Angeline Company, according to the evidence it introduced in the court below, yielded only a protesting assent to the doctrine of Clute vs. Fisher, having been advised by Mr. Clark that that case might be overruled.

In any event, according to the evidence of the Lake Angeline Company, its manager, Mr. Kidder, refused a proposition made by the Cleveland Company to the effect that the Cleveland Company would quit-claim all its interest south of the south line of section 10 in consideration for a quit-claim from the Angeline Company of all its interests in the land north of said section line. If the ordinary doctrine of riparian rights determined the rights of the parties in this suit, the Cleveland Company was, at that time, the owner of a triangular piece of land south of the said section line, out of which the Lake Angeline Company subsequently mined a large quantity of high grade Bessemer ore. At the time, however, that we are referring to no ore was known to exist under the bed of the lake and its ownership was a matter of little importance.

Subsequently, however, in the year 1886, the Cleveland Company found ore near the north shore of the bed of the lake, not, however, in territory in controversy in this suit. This ore body extended under a portion of the bed of the lake. In 1890 the complainant here discovered ore near the south border of the lake, put down a shaft and began the development of a mine. Late in 1891 or early in 1892 it became apparent that this ore body on the south shore of the lake extended under the water and the three parties to this

suit began negotiations with a view to entering into a contract to pump out the lake for the purpose of conducting mining under the bed thereof. It was, of course, of the utmost importance that the boundaries of the respective properties in the bed of the lake should once and for all be fully settled. As a result of the negotiations, the three mining companies united in a petition to the village council of Ishpeming, requesting permission to pump out the water, specifically setting forth the boundaries of their respective properties and alleging that the south line of section 10 was the boundary line between the Lake Angeline Company's and the Cleveland Company's properties. Based upon this petition to the council, an ordinance was passed wherein the same boundaries were again set forth.

Following the passage of this ordinance, on the 17th of March, 1892, the three parties to this suit entered into a pumping contract wherein they recognized the boundaries of their respective properties as set out in the previous papers and agreed to bear the expense of pumping out the water in the first instance in certain proportions, which, according to the evidence, were fixed by the above agreed boundaries. After the lake was once pumped out the two defendants here were to buy the pumping outfit and continue the drainage of the lake at their joint expense, the expense to be borne by each to be determined each year by the quantity of iron ore they respectively took from the bed of the lake. The Lake Angeline Company, in consideration of its not being required to do any of the pumping after once the lake was pumped

out, agreed to construct a flume along the south line of section 10 so as to take up all the drainage which fell south of the section line and which otherwise would have gone into the bed of the lake.

The lake was pumped dry and the two defendants at their joint expense, according to the contract, continued to keep it dry from that time on, expending therein many thousand dollars. The Cleveland Company continued to mine in its mine on the north shore of the lake, in time putting down a shaft in the bed of the lake, so that if the lake bed were allowed to fill again its mining property would be ruined.

The Lake Angeline Company began its mining operations on the south shore of the lake and in time opened up a valuable mine there. In process of time the indications pointed to the ore deposit on the south shore of the lake extending northward over the section line, although the first indications did not show very much ore. The Lake Angeline Company notified the Cleveland Company of the dip of this ore and that it probably extended into the Cleveland Company's territory north of the section line, and thereupon the Cleveland Company requested and was granted permission to go into the mine of the Lake Angeline Company and drill diamond-drill holes northward for the purpose of testing the deposit of the ore and its extent northward of the section line. Many thousands of dollars were spent in this exploration. After the discovery of the deposit north of the section line, the Lake Angeline Company wished to make a contract to take the ore out under a royalty, which, however, was refused by the Cleveland

Company and the Cleveland Company thereupon, from its own mine on the north side of the lake, tunnelled southward many hundred feet through solid rock to reach this deposit of ore, put in an extensive mining plant and drove drifts and cross-cuts, opening up a valuable mine. The ore deposit of the Lake Angeline Company and the Cleveland Company on the south side of the lake run together and in their mining operations they inadvertently trespassed on each other's territory, and both parties settled amicably for such trespass. On two different occasions, in order to prevent future trespasses, the Cleveland Company and the Angeline Company, by joint survey down in the mine, located the south line of section 10 and marked it as the boundary line for the future guidance of their miners. Maps were made from month to month by each company of its workings underground and exchanged, each party marking the section line as the boundary between the properties. In the pumping out of the lake and the mining operations conducted therein, the parties to this suit spent several hundred thousand dollars.

In June, 1894, the Supreme Court of Michigan, in Ice Co. vs. Ice Co., 122 Mich., 227, overruled Clute vs. Fisher. The Lake Angeline Company was promptly advised of this, but paid no attention to it. The mining operations were conducted thereafter as theretofore, in fact, many of these things we have heretofore stated as recognitions of the boundary line occurred subsequent to that time. Late in 1896, the large extent of the deposit of the Cleveland Iron Mining Company just north of the section line was conclusively proved up as the result of the

large number of drifts and crosscuts and development work done therein by the Cleveland Company. In November, 1896, this suit was brought. We do not think any federal question exists in this case.

It is true the defendant, the Cleveland Iron Mining Company, claimed in one defense of its answer that the United States patents, under which it derived title, gave it all the land north of the south line of section ten, and that this fact was denied by the Lake Angeline Company. The case, however, was not decided, nor made to depend, in any manner, upon the construction of such patents, but upon various other defenses made in the answer. This court will examine the opinion of the state court for the purpose of determining what questions were there actually decided.

Philip Fire Asn. vs. New York, 119 O. S., 110, 116.

Walter A. Wood Co. vs. Skinner, 139 U. S., 293, 295.

The opinion of the Supreme Court of Michigan is a part of the record here, but for convenience we would refer the court to the printed report thereof in 76 N. W. Rep., 395, where there is a map of Lake Angeline showing the section lines.

By the examination of this opinion it will be seen that no importance whatever was attached to the construction of the patents under which the several parties claim title, but, on the contrary, the bill in chancery was dismissed and the complainant denied all relief on the following grounds, which, while not stated in that order, were, nevertheless, distinctly decided by the Supreme Court.

1. That the exact boundary line between the parties was in controversy and that the parties settled such controversy and fixed the boundary by agreement among themselves, to-wit, the pumping contract and the proceedings which led up to it. In other words, there was a boundary settlement.

2. That the plaintiff in error here, by virtue of its long acquiescence in such boundary and in view of the large expenditures made and to be made, and especially by reason of the existence of the pumping contract which imposed long and continuous burdens upon the defendants (which contract the Lake Angeline Company put in evidence and insisted still remained in force at the time of the trial, and which required the defendants to pump all the water from the lake bed), was estopped from questioning the title and ownership of the Cleveland Iron Mining Company in all property north of the section line.

3. That the parties, on the faith of the pumping contract had materially changed their condition and situation and that it was impossible to restore the parties to the *statu quo* existing before the making of that contract.

Not only did the Supreme Court, in no manner, refer to the patents as determining the rights of the parties but they found at least three distinct grounds upon which, as above stated, the complainant was not entitled to relief. It is, therefore, entirely clear that this court is without jurisdiction as there is no federal question here. We quote from the opinion of Justice Peckham, in Fowler et al. vs. Lamson et al., 164 U. S., 252.

"It has also been frequently decided that to give this court jurisdiction on writ of error to a state court, it must appear affirmatively, not only that a federal question was presented for decision by the state court, but that its decision was necessary to the determination of the cause and that it was decided adversely to the party claiming a right under the federal laws or constitution, or that the judgment, as rendered, could not have been given without deciding it."

Justice Fuller, in Hammond vs. Johnston, 142 U. S., 78, states the doctrine a little differently.

"It is well settled that where the Supreme Court of a state decides a federal question in rendering a judgment and also decides against the plaintiff in error upon an independent ground, not involving a federal question, and broad enough to maintain the judgment, the writ of error will be dismissed without considering the federal question."

These cases are in accordance with a long line of decisions too numerous to make reference necessary.

As above stated, the state court decided against the plaintiff in error on three distinct grounds each of which was sufficient to have maintained the judgment and none of which involved a federal question. The rights of the defendants were confirmed to them in the bed of the lake by virtue of the contracts and acts of the parties themselves, and not by a construction placed by the court upon the original grants contained in the patents from the United States.

2nd. The existence and construction of the patents of the United States under which the respective parties derived their title would not, in our opinion, for two reasons, give this court jurisdiction of this case even if such construction had been the only question in the case.

1st. The only question of construction of the patents which could be involved would be the extent of ownership of the respective parties in the bed of Lake Angeline. The extent and nature of such ownership is a matter of policy for the states themselves to determine and one in which the general government is not concerned.

St. Louis vs. Rutz, 138 U. S., 226.
Hadin vs. Jordan, 140 U. S., 371.

2d. The question of construction was not raised in the manner required by this court. Such a question as we understand it, must be specially set up and the right claimed thereunder in the state court.

Texas & Pac. Ry. Co. vs. Southern Pac. Ry. Co., 137 U. S. 48.
Leeper vs. Texas, 139 U. S., 462.
Mo. Pac. Ry. Co. vs. Fitzgerald, 160 U. S., 556, 575.

Since the preparation of the foregoing brief, F. O. Clark, solicitor for complainant, has delivered to us a copy of his printed application for a writ of error in this case. We think the opinion of the Supreme Court of Michigan completely answers all of Mr. Clark's arguments, but we have concluded to refer briefly to some of them.

We have already stated that the court decided that the Cleveland Iron Mining Company owned the land in question, not by virtue of its United States patents, but by reason of the contracts and acts of the parties themselves. In fact, while the court does not expressly so decide, the inference is clear that the court was of the opinion that under Ice Co. vs. Ice Co.,

supra, the bed of this lake was originally subject to apportionment among the riparian owners in some equitable manner and that, had that been the only question in the case, the contention of the complainant that it owned land north of the section line as appurtenant to its grant would have been sustained. In other words, so far as they decided anything upon this point, they held with complainant.

Notwithstanding this, Mr. Clark, on page six of his application, makes a quotation from the opinion of the Supreme Court from which he claims that they decided adversely to his title under his patents. The quotation made by him reads as follows:

"The Cleveland Iron Mining Company claimed title by virtue of the original patent. Complainant owned no specific piece of land north of the section line, even under its own theory, which could be measured by metes and bounds. How much, if any, it owned could only be determined by agreement or the decree of a court of equity."

Mr. Clark's contention shows that he misconceives altogether what the Supreme Court said. A conveyance bounded upon a lake, does not convey title, in the ordinary sense, to the submerged land. The nature of ownership in the bed of a lake of an abutting proprietor is well stated in Ice Co. vs. Ice Co., supra:

"The shore proprietor takes by virtue of shore ownership. His interest in the bed of the stream he acquires as appurtenant to the grant and the extent of that interest depends upon his frontage, and the form, length and breadth of the body of water upon what he abuts."

What the Supreme Court meant in the quotation to which Mr. Clark takes exception (as is clearly apparent when it is

examined in the light of the whole opinion), was that Mr. Clark did not contend that he owned any specific piece of property north of the section line, but only that he had interests therein which should be set off to him in severalty. If the Lake Angeline Company had owned any specific portion of the bed of the lake which was capable of being measured—set off by metes and bounds—Mr. Clark would have brought an action in ejectment; he would not have filed a bill in chancery. He filed his bill on the theory that he had an interest there which was not capable of being set off by a surveyor but only by a decree of the court or by agreement of the parties, and Mr. Clark, in the original brief which he filed, cited in support of that proposition and his right to maintain this bill in equity the following cases:

Lincoln vs. Davis, 53 Mich., 389.
Jones vs. Lee, 77 Mich., 40.
Hardin vs. Jordan, 140 U. S., 402.

Mr. Clark, in the brief he filed in the Supreme Court of Michigan, quoted from the opinion of Hardin vs. Jordan, the following:

"If there should arise any dispute between the plaintiff and other riparian owners of land situate on the margin of the lake as to the convergence of the side lines of plaintiff's land in the lake, it can be disposed of by the parties themselves by a resort to equity or to such other mode of procedure as may be proper."

Following the above quotation, Mr. Clark, in his brief of argument in the Supreme Court of Michigan in our case, used the following language:

"Thus, it has been held * * * that there could be

no proper division of an inland lake * * * by undertaking to divide it *fillum aquae*; * * * but that it should be by convergent lines to a common, equitable center, equitably determined in a court of equity, as closely as it is possible to be done under the circumstances but which can never be done to absolute accuracy."

Elsewhere Mr. Clark in the same brief in contending that the Exhibit A, which he had attached to his bill in equity furnished one mode of equitable apportionment of the bed of the lake, used the following language:

"There can be no question that such division (referring to a division by lines converging from the shore to the center) would be absolutely accurate if the inland lake was exactly round; but as suggested by Justice Campbell (Lincoln vs. Davis, 53 Mich.) the shore is usually irregular in form; therefore a division can only be arrived at in a manner most reasonable, by equitable apportionment under the direction of the court.

"Now, as to this case, Lake Angeline is about as broad as long were it not for its arms lying east, west and south. If we were to cut off these arms, dividing the balance into segments * * * and apportion the arms separately by the 'river rule' by a line drawn from the main body of the lake through the center of each arm, thus apportioning the arms separately to the abutting owners and the main body by segments adjacent to the holdings of the owners upon the main body of the lake, we would undoubtedly come to the most equitable mode of division possible."

It was because of this argument and reasoning of Mr. Clark's that the Supreme Court of Michigan in this case said that, upon complainant's theory, it owned no land which was measurable by metes and bounds and that whatever it owned could only be determined by agreement or the decree of a

court. As heretofore stated, this was complainant's theory, that it needed the aid of a court of equity to equitably apportion to it its property in the bed of the lake. The court was stating complainant's theory, not deciding the question.

Mr. Clark also devotes considerable space to the construction placed by the Supreme Court of Michigan upon one of its statutes, restricting the alienation, by corporations, of their mining property, requiring a vote of stockholders, etc. This court has repeatedly held that it will adopt the construction which the state courts have placed upon their own statutes; therefore it will not quarrel with the construction which the Supreme Court of Michigan placed upon this statute. What the court in its opinion said was this:

"Do the contract, settling the boundary line and acquiescence therein and acts done thereunder estop complainant to now assert a different line? The rule is settled by the decisions of this court that where disputed boundary lines have been established by express agreement, or under such circumstances that an agreement will be implied, and parties have, for any considerable time, recognized them, they will be upheld though title by adverse possession could not be maintained. *Joyce vs. Williams, 26 Mich., 332; Smith vs. Hamilton, 22 Mich., 433; Jones vs. Pashby, 67 Mich., 459.*

"According to the testimony on the part of the plaintiff, there was a dispute as to the boundary line. * * * If his testimony be true, and for this purpose the company must stand by its own testimony, there was a dispute and it was settled by the agreement; complainant recognized it for nearly five years and saw all these expenditures made by the defendants without protest.

"Complainant however, invokes the doctrine that the title to the land cannot rest on estoppel on account of the statute

of frauds, and that a vote of three-fifths of the entire stock of the company is essential, under the statute, to convey title. The obvious reply to the first proposition is that it is also established that the statute of frauds does not apply to boundary lines and that the doctrine of estoppel will be applied to the voluntary adjustment of disputed boundaries. *Hayes vs. Livingstone, 34 Mich., 384-397.*

"Under the theory of complainant, corporations could not settle boundaries without a meeting of the stockholders called to pass upon the alienation of its lands and the doctrine of estoppel could never be applied to a boundary line between corporations or between a corporation and an individual. So, too, in reply to the second proposition, it may be said that the statute does not apply to the voluntary adjustment of these lines, but to alienation by deed of conveyance. Complainant was not alienating, dividing or selling any of its real estate within the language of the statute. *Howard's Annotated Statutes, Sec. 4052.*

"Alienation means, in law, a transfer of title by conveyance.

"Webster's dictionary, Century dictionary."

We wish specially to refer to IV and V parts of Mr. Clark's application for the writ of error. The argument presented under division IV is completely answered by what we have already said and by the quotation from the opinion of the Supreme Court. There was no alienation or conveyance of land in the ordinary sense, but an adjustment and settlement of a boundary question. The rights of abutting owners in the bed of an irregular inland lake are certainly difficult of adjustment and it is a case eminently proper for settlement by the parties themselves.

Hardin vs. Jordan, supra.
Jones vs. Lee, supra.

By the settlement the Lake Angeline Company got prop-

erty below the section line which, under the common law rule of riparian rights, clearly belonged to the Cleveland Iron Mining Company. It mined out the ore, of which there was a large quantity, and filled up this space with refuse and rock. In the adjustment of boundaries it got a piece of land at that time believed to be of more value than what it was giving up.

Respectfully submitted,

HOYT, DUSTIN & KELLEY,

and

GEO. HAYDEN,

Attorneys for The Cleveland Iron Mining Co.

A. C. DUSTIN, of Counsel.

THE

Supreme Court of the United States.

THE PITTSBURGH AND LAKE ANGELINE IRON COMPANY,
APPELLANT,

vs.

THE CLEVELAND IRON MINING COMPANY AND THE LAKE SUPERIOR IRON COMPANY,
APPELLEES.

Now comes the Lake Superior Iron Company, one of the defendants in error in this cause, by its counsel, and moves the court for an order requiring the clerk of the Supreme Court of the State of Michigan to certify to this court copies of the briefs filed on the part of said Pittsburgh and Lake Angeline Iron Company in said Supreme Court of Michigan, upon the hearing of this cause before that court, to be used as a part of the record in this cause upon the motion to dismiss the writ of error therein, in order that this court may ascertain from such briefs whether any such question was raised and decided by said Supreme Court of Michigan in this cause, and in such manner, as to confer jurisdiction upon this court to review said decision.

This motion is founded upon the record of this cause and upon the motion to dismiss the writ of error therein, and the affidavit thereto attached now on file therein, from which the following facts appear:

This case was brought in the Circuit Court for the County of Marquette, State of Michigan, in equity, by the complainant against the two defendants, who, with the the complainant, owned all the land abutting on a small inland lake in Marquette County, Michigan, known as Lake Angeline. The object of the bill was to obtain a decree of the court apportioning among the shore owners the bed of Lake Angeline, from which the water had been drained by arrangement between the three parties. The Circuit Court found that by agreement between the parties, and their subsequent acts, in reliance on such agreement, they had apportioned said lake bed among themselves, and that the complainant was estopped to claim any portion of the lake bed in opposition to the partition so made. The complainant appealed to the Supreme Court of the State of Michigan and the decree was affirmed on the same grounds as stated by the lower court.

The complainant has obtained the allowance of a writ of error from this court to review the said decision of the Supreme Court of Michigan. It is claimed by the complainant in support of its appeal that the decision of the Supreme Court of Michigan was based upon a holding by that court that "complainant owned no specific piece of land north of the section line (that is, in the lake bed), even under its own theory, which could be measured by metes and bounds. How much, if any, it owned could only be determined by agreement, or the decree of a court of equity."

It is claimed that this is a federal question, arising under the laws of the United States, as to what rights in the bed

of a meandered lake are conveyed by patent of the United States, granting lands abutting on the lake, and therefore this court has jurisdiction to review the decision.

Motions have been entered in behalf of the defendants to dismiss the writ of error for the reason that no federal questions were raised before the Supreme Court of Michigan by the appellant, which were decided by the court adversely to it, and that this court has no jurisdiction under the provisions of Section 709 of the Revised Statutes to review said decision.

Complainant, by its pleadings in the case, made no specific claim of right, title, or interest in the lake bed by virtue of its patents, or any law of the United States, but claimed rights therein as appurtenant to its ownership of the abutting land.

Briefs were filed with the Supreme Court of Michigan by the complainant's counsel, and served upon defendant's counsel in accordance with the rules of the Supreme Court of Michigan. It was not urged or claimed by complainant's counsel in such briefs that it obtained any rights in the lake bed by virtue of any law of the United States. On the contrary, it was insisted by complainant before said court, in its briefs, that rights and titles in the lake bed accrued to the abutting owners as appurtenant to their riparian ownership under and by virtue of the laws of the State of Michigan; that the ownership of the lake bed at the time of the issue of the patents was in the State of Michigan, and that the rights of complainant, as well as of the defendant, in the lake bed depended entirely upon the law of the State of Michigan. The briefs of complainant's counsel are required, so that this court can see that no claim was made by the complainant before the Supreme Court of Michigan under any law of the United States upon which a decision was made adverse to such claim,

and that the decision of what is now claimed to be a federal question, if any such decision was made by the Supreme Court of Michigan, was exactly in accordance with the contention of complainant's counsel upon the hearing before that court.

Dated May 15th, A. D. 1899.

DAN H. BALL,
Attorney for Appellee,
The Lake Superior Iron Company

THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE PITTSBURGH AND LAKE ANGELINE IRON COMPANY, APPELLANT, *v.* THE CLEVELAND IRON MINING COMPANY AND THE LAKE SUPERIOR IRON COMPANY, APPELLEES.	*No.* 778.

Memorandum Brief on Application for Order to Send Up Certified Copies of Briefs.

This case was brought in the Circuit Court for the County of Marquette, State of Michigan, in equity, by the complainant against the two defendants, who, with the complainant, owned all the land abutting on a small inland lake in Marquette County, Michigan, known as Lake Angeline. The object of the bill was to obtain a decree of the court apportioning among the shore owners the bed of Lake Angeline, from which the water had been drained by arrangement between the three parties. The Circuit Court found that by agreement between the parties, and their subsequent acts, in reliance on such agreement,

they had apportioned said lake bed among themselves, and that the complainant was estopped to claim any portion of the lake bed in opposition to the partition so made. The complainant appealed to the Supreme Court of the State of Michigan, and the decree was affirmed on the same grounds as stated by the lower court.

The complainant has obtained the allowance of a writ of error from this court to review the said decision of the Supreme Court of Michigan. It is claimed by the complainant in support of its appeal that the decision of the Supreme Court of Michigan was based upon a holding by that court that "complainant owned no specific piece of land north of the section line (that is, in the lake bed), even under its own theory, which could be measured by metes and bounds. How much, if any, it owned could only be determined by agreement, or the decree of a court of equity."

It is claimed that this is a federal question, arising under the laws of the United States, as to what rights in the bed of a meandered lake are conveyed by patent of the United States, granting lands abutting on the lake, and therefore this court has jurisdiction to review the decision.

I have entered a motion in behalf of the Lake Superior Iron Company to dismiss the writ of error for the reason that no federal questions were raised before the Supreme Court by the appellant which were decided by the court adversely to it, and that this court has no jurisdiction under the provisions of Section 709 of the Revised Statutes to review said decision. A similar motion has also been entered on behalf of the Cleveland Iron Mining Company.

Complainant, by its pleadings in the case, made no specific claim of right, title, or interest in and by virtue

of its patents or any law of the United States, but claimed rights in the lake bed as appurtenant to its ownership of the abutting land.

Rule 40 of the Supreme Court of Michigan requires the parties to file printed briefs and provides that "the brief of a party bringing a cause into this court shall contain a clear and concise statement of the facts of the case distinct from argument, and on the errors upon which he relies, the questions involved, and the manner in which they are raised."

Rule 41 provides that "two copies of the appellant's brief shall be served upon the appellee."

Rule 42 provides that "twelve copies of all briefs shall be filed at least forty-eight hours before the case has been placed on call."

It has been repeatedly held by the Supreme Court of Michigan that only such points as counsel make and rely on for reversal in their original brief will be considered by the court in disposing of the case, even though additional errors may be assigned and orally argued.

Black *v.* Dawson, 82 Michigan, 485.

Lynch *v.* Craney, 95 Michigan, 200.

Graves *v.* Battle Creek, 95 Michigan, 266.

Briefs were filed and served by complainant's counsel in accordance with these rules. It was not urged or claimed by complainant's counsel in such briefs that it obtained any rights in the lake bed by virtue of its patents from the United States, or by virtue of any law of the United States. On the contrary, it was insisted by complainant before the Supreme Court of Michigan, in its briefs, that rights and titles in the lake bed accrued to the abutting owners as appurtenant to their riparian ownership under and by virtue of the laws of the State of

Michigan ; that the ownership of the lake bed at the time of the issue of the patents was in the State of Michigan, and that the rights of the complainant, as well as of the defendant, in the lake bed depended entirely upon the law of the State of Michigan. This is shown by the affidavit which is filed, together with the motion to dismiss, and the brief filed in support of said motion, and the extracts from the briefs of counsel, by which the claims mentioned are made, are set forth in the brief. Such extracts appear on pages 7 to 14 of my brief filed with the motion to dismiss.

I think this court should have before it in an authoritative form the briefs of complainant's counsel which were filed in the Supreme Court of Michigan, setting forth the claims made by them, so that this court can see not only that the claim now urged as arising under the laws of the United States, was not so urged, raised, or presented to the Supreme Court of Michigan, but that it was expressly urged and argued before that court that the question was arising solely under the laws of the State of Michigan, and therefore that no right, title, or immunity was claimed by the appellant before the Supreme Court of Michigan, in which the decision was adverse to such claim.

I submit that the clerk of the Supreme Court of Michigan should be directed to certify to this court copies of the briefs filed by the complainant upon the presentation of its case before the Supreme Court of Michigan, and ask for an order to that effect.

DAN H. BALL,
Attorney for Lake Superior Iron Co.